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No. 82-343

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROBINSON BUS SERVICE, INC., STEWART BUS COMPANY, INC., RAPID TRANSPORTATION, INC., STUDENT TRANSIT CORPORATION and NORTHTOWN BUS SERVICE, LTD.,

Petitioners,

v.

WILLETT MOTOR COACH CO.,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First Judicial District

REPLY BRIEF FOR PETITIONERS

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Petitioners Robinson Bus Service, Inc., Stewart Bus Company, Inc., Rapid Transportation, Inc., Student Transit Corporation and Northtown Bus Service, Ltd.* reply to Respondent's Brief in Opposition ("Resp. Brf.") as follows:

Respondent is incorrect in arguing that the pleadings of this case "frame no federal questions." (Resp. Brf. at 4). Respondent's initial Complaint in this action was dis-

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* Petitioners' statement pursuant to Supreme Court Rule 28.1 is set forth at page A17 of the Petition filed August 26, 1982.

missed by the trial court on the ground that respondent lacked standing as a losing bidder to vitiate the award of a public contract. Shortly after its action was dismissed, respondent filed a Second Amended Complaint, virtually identical to its original pleading, but alleging, *inter alia*, that: "Willett is a taxpayer of the State of Illinois . . ." (Resp. Brf. at A2); "Willett and other taxpayers have been immediately and irreparably injured . . ." (*Id.* at A5); and "Willett and other taxpayers have no adequate remedy at law." (*Id.* at A6). In their Answer to Willett's rather convoluted invocation of taxpayer standing for the sole purpose of pursuing its own interests to the detriment of the taxpayers' interests, petitioners Student Transit Corporation and Northtown Bus Service, Ltd. raised as an affirmative defense that Willett again lacked standing to bring its action. (Resp. Brf. at A13). Thus, respondent's inadequacy as the representative of the interests of the taxpayers it purports to represent—the very issue that is presented by this Petition—was asserted by petitioners at the earliest possible stage of these proceedings.

Petitioners' challenge to the adequacy of Willett's representative status was further pressed at each subsequent stage of the proceedings. Petitioners argued that Willett's interests in the litigation were antagonistic to the taxpayers at large before the Appellate Court of Illinois (*Willett Motor Coach Co. v. Board of Education, Etc., et al.*, No. 81-1134, Brief and Argument of Intervenor-Appellees at 9-12), before that court on Petition for Rehearing* (*Id.*, Petition for Rehearing at 10-15 and

* In response to the Appellate Court's superficial treatment of petitioners' challenge to respondent's taxpayer standing, petitioners wrote in their Petition for Rehearing: "Finally, intervenors submit that this Court has lost sight of the ultimate concern for protecting the taxpayers' interest." (Petition for Rehearing to the Appellate Court of Illinois at 14).

Reply Brief Petition for Rehearing at 6-8); and before the Supreme Court of Illinois (*Willett Motor Coach Co. v. Board of Education, Etc., et al.*, No. 56435, Petition for Leave to Appeal at 32-36). The Attorney General of the State of Illinois also filed a brief in the Supreme Court of Illinois in support of petitioners' Petition for Leave to Appeal to that court that also raised the issue of respondent's taxpayer standing. The Attorney General concluded: "[T]he plaintiff should not have had standing as a taxpayer to enforce his right as a bidder on a government contract where the result would be injurious to taxpayers." (Brief of Attorney General Tyrone C. Fahner at 3).

Therefore, it is disingenuous to imply that petitioners have waived the question presented to this Court in the proceedings below. The conflict between respondent's own interests and the interests of the taxpayers it purports to represent was asserted at each stage of the state court proceedings. Respondent cannot be heard to complain of any lack of notice that the issue would again be asserted here. *Cf. Wood v. Georgia*, 450 U.S. 261, 265 n.5 (1981).

Respectfully submitted,

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